IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL WRIT PETITION NO.6212/06

Ram Pratap Meena **Versus** State & Ors.

DATE OF ORDER :: 25/04/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Lokesh Sharma, for petitioner
Mr. B.K. Sharma, Dy.G.A.

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Petitioner was initially elected as Ward Panch and thereafter, Up Sarpanch of Gram Panchayat Kherlirel. After notice being served upon him in regard to pre-election disqualification, the respondents conducted inquiry u/s.39(2) of Act, 1994 and finally held him to be disqualified vide order Ann.3 dated 5th July, 2006.

The legal question raised before this court was as to whether a pre-election disqualification can be examined by the Government in exercise of its power u/s.39(2) of Act, 1994 or he can be disqualified only by way of election petition provided u/s.43 of the Act.

This Court in D.B. Civil Special Appeal [Writ] No.236/06, Smt. Sameera Bano Vs. State of Rajasthan & two other connected matters, decided on 2nd April, 2007 finally held that a pre-election disqualification can be adjudicated only in an election petition before the District Judge u/s.43 of the Act read with Rule 80 of the

Election Rules and cannot be adjudicated by the authority under Rule 23 of the Rules.

In view of pronouncement made by this court as referred to supra, the order passed by respondents Ann.3 is not legally sustainable and accordingly, the writ petition succeeds and is hereby allowed. The order Ann.3 dated 5th July, 2006 is hereby quashed and set aside and the position of petitioner which he was holding on the date of passing of order be restored back. No order as to costs.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.